

## Revised Regulatory Impact Statement

### 6 NYCRR 215, Open Fires

Through this emergency rule making, the Department is expanding the high fire-risk burn ban period for an additional 90 days; from May 15<sup>th</sup> through October 10<sup>th</sup> in order to ensure public safety. The revision to Part 215.3 (a) prohibits all residential brush burning between March 16<sup>th</sup> and October 11<sup>th</sup>.

#### STATUTORY AUTHORIZATION

The promulgation of amendments to Part 215 is authorized by the following sections of the Environmental Conservation Law (ECL) which, taken together, clearly empower the Department to implement the rule and amend it:

Section 1-0101. This Section declares it to be the policy of New York State to conserve, improve and protect its natural resources and environment and control air pollution in order to enhance the health, safety and welfare of the people of New York State and their overall economic and social well being. Section 1-0101 further expresses, among other things, that it is the policy of New York State to coordinate the State's environmental plans, functions, powers and programs with those of the federal government and other regions and manage air resources to the end that the State may fulfill its responsibility as trustee of the environment for present and future generations. This Section also provides that it is the policy of New York State to foster, promote, create and maintain conditions by which man and nature can thrive in harmony by providing that care is taken for air resources that are shared with other states.

Section 3-0301. This Section empowers the Department to promulgate regulations to carry out the environmental policy of New York State set forth in Section 1-0101 and specifically empowers the Department to cooperate with officials and representatives of the federal government, other states and interstate agencies

regarding problems affecting the environment of New York State. Section 3-0301 specifically empowers the Department to provide for the prevention and abatement of air pollution.

Section 9-0105. This Section generally empowers the Department to manage forests, including the prevention of fire.

Section 9-1103. This Section specifically empowers the Department to prevent and control fires.

Section 19-0103. This Section declares that it is the policy of New York State to maintain the purity of air resources and to require the use of all available practical and reasonable methods to prevent and control air pollution in the State.

Section 19-0105. This Section declares that it is the purpose of Article 19 of the ECL to safeguard the air resources of New York State under a program which is consistent with the policy expressed in Section 19-0103 and in accordance with other provisions of Article 19.

Section 19-0301. This section declares that the Department has the power to promulgate regulations for preventing, controlling or prohibiting air pollution.

Section 19-0303. This Section provides that the terms of any air pollution control regulation promulgated by the Department may differentiate between particular types and conditions of air pollution and air contamination sources.

Section 19-0305. This Section authorizes the Department to enforce the codes, rules and regulations

established in accordance with Article 19.

Section 70-0707. This Section empowers the Department to promulgate procedural rules and regulations.

Sections 71-2103 and 71-2105. These sections include provisions for the civil and criminal enforcement of Article 19 of the ECL.

## LEGISLATIVE OBJECTIVES

It is the declared policy of the state of New York, as pronounced by the Legislature in the Environmental Conservation Law, to maintain a reasonable degree of purity of the air resources of the state consistent with the public health and welfare and the public enjoyment and the protection of physical property and other resources. That policy requires the use of all available practical and reasonable methods to prevent and control air pollution in the state of New York. The department has the power, as provided for in the Environmental Conservation Law, to formulate, adopt and promulgate, amend and repeal codes and rules and regulations for preventing, controlling or prohibiting air pollution in a manner consistent with that policy. In furtherance of that policy and the Legislature's objectives, the proposed rule amendments will expand the high fire risk burn ban period to further ensure public safety and general welfare.

## NEEDS AND BENEFITS

As adopted, Part 215 prohibits certain types of open fires throughout the state. An exception to the open fires prohibition allows the on-site burning in any town with a total population less than 20,000 of downed

limbs and branches (including branches with attached leaves or needles) less than six inches in diameter and eight feet in length between May 15th and the following March 15th. Section 215.3 (a). The current rule, therefore, prohibits certain “brush burning” in smaller communities from March 16th through May 14<sup>th</sup>. This burn ban period has historically been the state's high fire-risk period. Several factors enable wildfires to start easily and spread quickly at this time, including the lack of green vegetation, abundance of available fuels such as dry grass and leaves, warm temperatures and wind.

Data indicates that New York State is currently experiencing a High Fire danger risk due to dryer than normal conditions. The National Wildfire Coordinating Group (NWCG) describes this High Fire status as follows: All fine dead fuels ignite readily and fires start easily from most causes. Unattended brush and campfires are likely to escape. Fires spread rapidly and short-distance spotting is common. High-intensity burning may develop on slopes or in concentrations of fine fuels. Fires may become serious and their control difficult unless they are attacked successfully while small. As of July 13, 2012 there are five active fires in the New York municipalities of Richmondville, North Elba, Indian Lake, Caroga, and Chester; comprising a total of 18.8 acres. In order to ensure public safety the Department by this emergency rule making is expanding the high fire risk burn ban period from for an additional 90 days from May 16th through October 10th.

## COSTS

This emergency rule making will not impose additional costs on local governments or municipalities. While the exemption for residential brush burning in smaller communities will be postponed for an additional 90 days to ensure public safety, no additional costs are anticipated for individuals in these communities to comply with the emergency rule.

## PAPERWORK

There will be no additional paperwork.

#### LOCAL GOVERNMENT MANDATES

No additional record keeping, reporting or other requirements would be placed upon local governments if the amendment to Part 215 is promulgated.

#### DUPLICATION BETWEEN THIS REGULATION AND OTHER REGULATIONS AND LAWS

This emergency rule making will not be duplicative with any other law or regulation.

#### ALTERNATIVES

The Department evaluated the no action alternative in addition to the emergency rule. If this emergency rule is not adopted, the potential fire-risk would be greater and the Department could not ensure public safety.

#### FEDERAL STANDARDS

There are no applicable federal regulations pertaining to open burning.

#### COMPLIANCE SCHEDULE

Compliance with this emergency regulation will be required immediately in order to ensure public safety.